

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-11-033**

PANEL: Ms Yvonne Tavares

APPEARANCES: The Appellant, [text deleted], appeared on his own behalf; [text deleted] was in attendance as an Interpreter; Manitoba Public Insurance Corporation ('MPIC') was represented by Ms Dianne Pemkowski.

HEARING DATE: July 24, 2012

ISSUE(S): Entitlement to Income Replacement Indemnity Benefits beyond March 28, 2010.

RELEVANT SECTIONS: Section 110(1)(a) of The Manitoba Public Insurance Corporation Act ('MPIC Act')

AICAC NOTE: THIS DECISION HAS BEEN EDITED TO PROTECT THE PERSONAL HEALTH INFORMATION OF INDIVIDUALS BY REMOVING PERSONAL IDENTIFIERS AND OTHER IDENTIFYING INFORMATION.

Reasons For Decision

The Appellant, [text deleted], was involved in a motor vehicle accident on July 20, 2009. As a result of this accident, the Appellant reported loss of consciousness, pain to his neck, back, chest and right knee. On December 3, 2009, the Appellant was involved in a second accident. As a result of that accident the Appellant sustained further soft tissue injuries. Due to the bodily injuries which the Appellant sustained in these motor vehicle accidents, he became entitled to Personal Injury Protection Plan ("PIPP") benefits in accordance with Part 2 of the MPIC Act.

At the time of the motor vehicle accidents, the Appellant was employed as a [text deleted] driver. Due to the injuries he sustained in the motor vehicle accidents, he was unable to work as a [text deleted] driver and became entitled to income replacement indemnity (“IRI”) benefits.

The Appellant attended for a multi-disciplinary assessment at the [Rehabilitation (Rehab) Clinic] on December 22 and 23, 2009 and commenced a work hardening program at [Rehab Clinic] on January 10, 2010. A Discharge Report from [Rehab Clinic] dated March 8, 2010 documented that the Appellant was fit for an immediate unmodified return to work as a [text deleted] driver.

On March 22, 2010, the Appellant’s case manager advised him that his IRI would end as of March 28, 2010. A decision letter was issued to that effect on August 9, 2010.

The Appellant sought a review of that decision. The Internal Review Officer, in a decision dated December 9, 2010, dismissed the Appellant’s Application for Review and confirmed the case manager’s decision. The Internal Review Officer found that the medical evidence from [Rehab Clinic] supported the decision that there were no objective findings that precluded the Appellant from working as a [text deleted] driver as of March 28, 2010.

The Appellant has now appealed that decision to this Commission. The issue which arises on this appeal is whether the Appellant is entitled to further IRI benefits beyond March 28, 2010.

Relevant Legislation:

Section 110(1)(a) of the MPIC Act provides as follows:

Events that end entitlement to I.R.I.

[110\(1\)](#) A victim ceases to be entitled to an income replacement indemnity when any of the following occurs:

(a) the victim is able to hold the employment that he or she held at the time of the accident;

Decision:

Upon hearing the testimony of the Appellant and after a careful review of all of the medical, paramedical and other reports and documentary evidenced filed in connection with this appeal, and after hearing the submissions of the Appellant and of counsel for MPIC, the Commission finds that the Appellant is not entitled to IRI benefits beyond March 28, 2010.

Reasons for Decision:

The Commission finds that the Appellant has failed to establish, on a balance of probabilities, that he was unable to return to his employment as a [text deleted] driver as of March 28, 2010. At the appeal hearing, the Appellant was a poor historian and unable to recite many of the relevant details pertaining to his accidents, his employment information and his return to work. He had significant difficulty recalling the events surrounding his inability to return to work. When questioned regarding his return to work, his version of events varied several times throughout the course of the hearing. As a result, the Commission finds that the Appellant's testimony at the appeal hearing was not reliable and did not establish an inability to return to work as of March 28, 2010.

Additionally, the Appellant has not provided any further medical information to contradict the [Rehab Clinic] Discharge Report that stated that the Appellant was capable of an immediate return to work effective March 8, 2010. The Appellant has the onus of establishing that he was unable to return to work as a [text deleted] driver beyond March 28, 2010, on the balance of

probabilities. The Commission finds that the Appellant has not met that onus. The Appellant's subjective indication that he was unable to return to work as of March 28, 2010 is insufficient to establish an inability to return to work in the circumstances of this case.

Accordingly, the Commission finds that the Appellant is not entitled to IRI benefits beyond March 28, 2010. As a result, the Appellant's appeal is dismissed and the Internal Review Decision dated December 9, 2010 is confirmed.

Dated at Winnipeg this 14th day of August, 2012.

YVONNE TAVARES